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SENATE BILL 104

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; PROVIDING FOR LIFE
IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE; AMENDING
AND REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-14 NMSA 1978 (being Laws 1979,
Chapter 150, Section 1, as amended) is amended to read:

"31-18-14. SENTENCING AUTHORITY--CAPITAL FELONIES.--

A. When a defendant has been convicted of a capital
felony, he shall be punished by life imprisonment without
possibility of release or parole or death. The punishment
shall be imposed after a sentencing hearing separate from the
trial or guilty plea proceeding. However, if the defendant has
not reached the age of majority at the time of the commission
of the capital felony for which he was convicted, he may be

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1 sentenced to life imprisonment without possibility of release
2 or parole but shall not be punished by death.

3 B. In the event the death penalty in a capital
4 felony case is held to be unconstitutional or otherwise
5 invalidated by the supreme court of the state of New Mexico or
6 the supreme court of the United States, the person previously
7 sentenced to death for a capital felony shall be sentenced to
8 life imprisonment without possibility of release or parole. "

9 Section 2. Section 31-18-23 NMSA 1978 (being Laws 1994,
10 Chapter 24, Section 2, as amended) is amended to read:

11 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
12 LIFE IMPRISONMENT--EXCEPTION. --

13 A. When a defendant is convicted of a third violent
14 felony, and each violent felony conviction is part of a
15 separate transaction or occurrence, and at least the third
16 violent felony conviction is in New Mexico, the defendant
17 [~~shall~~], in addition to the sentence imposed for the third
18 violent conviction [~~when that sentence does not result in~~
19 ~~death~~], shall be punished by a sentence of life imprisonment.
20 The life imprisonment sentence shall be subject to parole
21 pursuant to the provisions of Section 31-21-10 NMSA 1978.

22 B. The sentence of life imprisonment shall be
23 imposed after a sentencing hearing, separate from the trial or
24 guilty plea proceeding resulting in the third violent felony
25 conviction, pursuant to the provisions of Section 31-18-24 NMSA

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1 1978.

2 C. For the purpose of this section, a violent
3 felony conviction incurred by a defendant before he reaches the
4 age of eighteen shall not count as a violent felony conviction.

5 D. When a defendant has a felony conviction from
6 another state, the felony conviction shall be considered a
7 violent felony for the purposes of the Criminal Sentencing Act
8 if that crime would be considered a violent felony in New
9 Mexico.

10 E. As used in the Criminal Sentencing Act:

11 (1) "great bodily harm" means an injury to the
12 person that creates a high probability of death or that causes
13 serious disfigurement or that results in permanent loss or
14 impairment of the function of any member or organ of the body;
15 and

16 (2) "violent felony" means:

17 (a) murder in the [~~first or~~] second
18 degree, as provided in Section 30-2-1 NMSA 1978;

19 (b) shooting at or from a motor vehicle
20 resulting in great bodily harm, as provided in Subsection B of
21 Section 30-3-8 NMSA 1978;

22 (c) kidnapping resulting in great bodily
23 harm inflicted upon the victim by his captor, as provided in
24 Subsection B of Section 30-4-1 NMSA 1978; [~~and~~]

25 (d) criminal sexual penetration, as

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1 provided in Subsection C or Paragraph (5) or (6) of Subsection
2 D of Section 30-9-11 NMSA 1978; and

3 (e) robbery while armed with a deadly
4 weapon resulting in great bodily harm as provided in Section
5 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
6 1978. "

7 Section 3. Section 31-20A-1 NMSA 1978 (being Laws 1979,
8 Chapter 150, Section 2) is amended to read:

9 "31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

10 A. At the conclusion of all capital felony cases
11 heard by jury, and after proper charge from the court and
12 argument of counsel, the jury shall retire to consider a
13 verdict of guilty or not guilty without any consideration of
14 punishment. In nonjury capital felony cases, the judge shall
15 first consider a finding of guilty or not guilty without any
16 consideration of punishment.

17 B. Upon a verdict by the jury or judge that the
18 defendant is guilty of a capital felony, or upon a plea of
19 guilty to a capital felony, the court shall conduct a separate
20 sentencing proceeding to determine whether the defendant should
21 be sentenced to life imprisonment without possibility of
22 release or parole or death [~~or life imprisonment as authorized~~
23 ~~herein~~]. In a jury trial, the sentencing proceeding shall be
24 conducted as soon as practicable by the original trial judge
25 before the original trial jury. In a nonjury trial, the

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1 sentencing proceeding shall be conducted as soon as practicable
2 by the original trial judge. In the case of a plea of guilty
3 to a capital felony, the sentencing proceeding shall be
4 conducted as soon as practicable by the original trial judge or
5 by a jury upon demand of a party.

6 C. In the sentencing proceeding, all evidence
7 admitted at the trial shall be considered, and additional
8 evidence may be presented as to the circumstances of the crime
9 and as to any aggravating or mitigating circumstances pursuant
10 to Sections [~~6 and 7 of this act~~] 31-20A-5 and 31-20A-6 NMSA
11 1978.

12 D. In a jury sentencing proceeding, the judge shall
13 give appropriate instructions and allow argument, and the jury
14 shall retire to determine the punishment to be imposed. In a
15 nonjury sentencing proceeding, or upon a plea of guilty, where
16 no jury has been demanded, the judge shall allow argument and
17 determine the punishment to be imposed."

18 Section 4. Section 31-20A-2 NMSA 1978 (being Laws 1979,
19 Chapter 150, Section 3) is amended to read:

20 "31-20A-2. DETERMINATION OF SENTENCE. --

21 A. Capital sentencing deliberations shall be guided
22 by the following considerations:

23 (1) whether aggravating circumstances exist as
24 enumerated in Section [~~6 of this act~~] 31-20A-5 NMSA 1978;

25 (2) whether mitigating circumstances exist as

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1 enumerated in Section [~~7 of this act~~] 31-20A-6 NMSA 1978; and

2 (3) whether other mitigating circumstances
3 exist.

4 B. After weighing the aggravating circumstances and
5 the mitigating circumstances, weighing them against each other,
6 and considering both the defendant and the crime, the jury or
7 judge shall determine whether the defendant should be sentenced
8 to life imprisonment without possibility of release or parole
9 or death [~~or life imprisonment~~]. "

10 Section 5. Section 31-20A-2.1 NMSA 1978 (being Laws 1991,
11 Chapter 30, Section 1) is amended to read:

12 "31-20A-2.1. [~~PROHIBITION AGAINST CAPITAL PUNISHMENT~~]
13 SENTENCING OF MENTALLY RETARDED PERSONS--PRESENTENCING
14 HEARING. --

15 A. As used in this section, "mentally retarded"
16 means significantly subaverage general intellectual functioning
17 existing concurrently with deficits in adaptive behavior. An
18 intelligence quotient of seventy or below on a reliably
19 administered intelligence quotient test shall be presumptive
20 evidence of mental retardation.

21 B. [~~The penalty~~] A sentence of death shall not be
22 imposed on [~~any~~] a person who is mentally retarded.

23 C. Upon motion of the defense requesting a ruling
24 that the penalty of death be precluded under this section, the
25 court shall hold a hearing, prior to conducting the sentencing

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1 proceeding under Section 31-20A-3 NMSA 1978. If the court
2 finds, by a preponderance of the evidence, that the defendant
3 is mentally retarded, it shall sentence the defendant to life
4 imprisonment without possibility of release or parole. A
5 ruling by the court that evidence of diminished intelligence
6 introduced by the defendant does not preclude the death penalty
7 under this section shall not restrict the defendant's
8 opportunity to introduce [~~such~~] the evidence at the sentencing
9 proceeding or to argue that [~~that~~] the evidence should be given
10 mitigating significance. If the sentencing proceeding is
11 conducted before a jury, the jury shall not be informed of any
12 ruling denying a defendant's motion under this section."

13 Section 6. Section 31-20A-3 NMSA 1978 (being Laws 1979,
14 Chapter 150, Section 4) is amended to read:

15 "31-20A-3. COURT SENTENCING. -- In a jury sentencing
16 proceeding in which the jury unanimously finds beyond a
17 reasonable doubt and specifies at least one of the aggravating
18 circumstances enumerated in Section [~~6 of this act~~] 31-20A-5
19 NMSA 1978, and unanimously specifies the sentence of death
20 pursuant to Section [~~3 of this act~~] 31-20A-2 NMSA 1978, the
21 court shall sentence the defendant to death. [~~Where~~] When a
22 sentence of death is not unanimously specified, or the jury
23 does not make the required finding, or the jury is unable to
24 reach a unanimous verdict, the court shall sentence the
25 defendant to life imprisonment without possibility of release

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1 or parole. In a nonjury sentencing proceeding and in cases
2 involving a plea of guilty, [~~where no jury has~~] when a jury has
3 not been demanded, the judge shall determine and impose the
4 sentence, but he shall not impose the sentence of death except
5 upon a finding beyond a reasonable doubt and specification of
6 at least one of the aggravating circumstances enumerated in
7 Section [~~6 of this act~~] 31-20A-5 NMSA 1978. "

8 Section 7. Section 31-21-10 NMSA 1978 (being Laws 1980,
9 Chapter 28, Section 1, as amended) is amended to read:

10 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

11 A. An inmate of an institution who was sentenced to
12 life imprisonment [~~as the result of the commission of a capital~~
13 ~~felony, who~~] because he was convicted of three violent felonies
14 and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA
15 1978, or [~~who~~] because he was convicted of two violent sexual
16 offenses and sentenced pursuant to Subsection A of Section
17 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978, becomes
18 eligible for a parole hearing after he has served thirty years
19 of his sentence. Before ordering the parole of an inmate
20 sentenced to life imprisonment, the board shall:

21 (1) interview the inmate at the institution
22 where he is committed;

23 (2) consider all pertinent information
24 concerning the inmate, including:

25 (a) the circumstances of the offense;

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1 (b) mitigating and aggravating
2 circumstances;

3 (c) whether a deadly weapon was used in
4 the commission of the offense;

5 (d) whether the inmate is a habitual
6 offender;

7 (e) the reports filed under Section
8 31-21-9 NMSA 1978; and

9 (f) the reports of such physical and
10 mental examinations as have been made while in ~~[prison]~~ an
11 institution;

12 (3) make a finding that a parole is in the
13 best interest of society and the inmate; and

14 (4) make a finding that the inmate is able and
15 willing to fulfill the obligations of a law-abiding citizen.

16 If parole is denied, the inmate sentenced to life
17 imprisonment shall again become entitled to a parole hearing at
18 two-year intervals. The board may, on its own motion, reopen
19 any case in which a hearing has already been granted and parole
20 denied.

21 ~~[B. Unless the board finds that it is in the best~~
22 ~~interest of society and the parolee to reduce the period of~~
23 ~~parole, a person who was convicted of a capital felony shall be~~
24 ~~required to undergo a minimum period of parole of five years.~~
25 ~~During the period of parole, the person shall be under the~~

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1 ~~guidance and supervision of the board.]~~

2 B. An inmate of an institution who is sentenced to
3 life imprisonment without possibility of release or parole as
4 the result of his conviction for a capital felony is not
5 eligible for parole and shall remain incarcerated for the
6 entirety of his natural life.

7 C. An inmate who was convicted of a first, second
8 or third degree felony and who has served the sentence of
9 imprisonment imposed by the court in [~~a corrections facility~~]
10 an institution designated by the corrections department shall
11 be required to undergo a two-year period of parole. An inmate
12 who was convicted of a fourth degree felony and who has served
13 the sentence of imprisonment imposed by the court in [~~a~~
14 ~~corrections facility~~] an institution designated by the
15 corrections department shall be required to undergo a one-year
16 period of parole. During the period of parole, the person
17 shall be under the guidance and supervision of the board.

18 D. [~~Every~~] A person [~~while~~] who is on parole shall
19 remain in the legal custody of the institution from which he
20 was released but shall be subject to the orders of the board.
21 The board shall furnish to each inmate as a prerequisite to his
22 release under its supervision a written statement of the
23 conditions of parole that shall be accepted and agreed to by
24 the inmate as evidenced by his signature affixed to a duplicate
25 copy to be retained in the files of the board. The board shall

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1 also require as a prerequisite to release the submission and
2 approval of a parole plan. If an inmate refuses to affix his
3 signature to the written statement of the conditions of his
4 parole or does not have an approved parole plan, he shall not
5 be released and shall remain in the custody of the [~~corrections~~
6 ~~facility~~] institution in which he has served his sentence,
7 excepting parole, until such time as the period of parole he
8 was required to serve, less meritorious deductions, if any,
9 expires, at which time he shall be released from that
10 [~~facility~~] institution without parole, or until such time that
11 he evidences his acceptance and agreement to the conditions of
12 parole as required or receives approval for his parole plan or
13 both. Time served from the date that an inmate refuses to
14 accept and agree to the conditions of parole or fails to
15 receive approval for his parole plan shall reduce the period,
16 if any, to be served under parole at a later date. If the
17 district court has ordered that the inmate make restitution to
18 a victim as provided in Section 31-17-1 NMSA 1978, the board
19 shall include restitution as a condition of parole. The board
20 shall also personally apprise the inmate of the conditions of
21 parole and his duties relating thereto.

22 E. When a person on parole has performed the
23 obligations of his release for the period of parole provided in
24 this section, the board shall make a final order of discharge
25 and issue him a certificate of discharge.

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1 F. Pursuant to the provisions of Section 31-18-15
2 NMSA 1978, the board shall require the inmate as a condition of
3 parole:

4 (1) to pay the actual costs of his parole
5 services to the adult probation and parole division of the
6 corrections department for deposit to the corrections
7 department intensive supervision fund not exceeding one
8 thousand twenty dollars (\$1,020) annually to be paid in monthly
9 installments of not less than fifteen dollars (\$15.00) and not
10 more than eighty-five dollars (\$85.00), subject to modification
11 by the adult probation and parole division on the basis of
12 changed financial circumstances; and

13 (2) to reimburse a law enforcement agency or
14 local crime stopper program for the amount of any reward paid
15 by the agency or program for information leading to his arrest,
16 prosecution or conviction.

17 G. The provisions of this section shall apply to
18 all inmates except geriatric, permanently incapacitated and
19 terminally ill inmates eligible for the medical and geriatric
20 parole program as provided by the Parole Board Act. "

21 Section 8. REPEAL. -- Section 31-18-14.1 NMSA 1978 (being
22 Laws 2001, Chapter 128, Section 1) is repealed.

23 Section 9. APPLICABILITY. -- The provisions of this act
24 apply only to an individual convicted of a capital felony
25 offense committed on or after July 1, 2003. As to an

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1 individual convicted of a capital felony offense committed
2 prior to July 1, 2003, the law regarding a capital felony
3 offense in effect at the time the offense was committed shall
4 apply.

5 Section 10. EFFECTIVE DATE. --The effective date of the
6 provisions of this act is July 1, 2003.

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